

COUNTY OF ESSEX

REPORT OF THE

AFFIRMATIVE ACTION COUNCIL

County Executive, Peter Shapiro

Hall of Records

Newark, New Jersey

COUNTY OF ESSEX

STATE OF NEW JERSEY

AFFIRMATIVE ACTION POLICY COUNCIL REPORT

SUMMER, 1980

AFFIRMATIVE ACTION COUNCIL

HALL OF RECORDS

NEWARK, NEW JERSEY

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ACKNOWLEDGEMENTS

The Affirmative Action Policy Council expresses its appreciation to the following members of County government staff who provided us with data, and who shared their extensive knowledge of government with members of the Council.

They are:

Raymond Durkin
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Vincent Marzullo
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Special thanks is also extended to Percy Miranda who supervised the staff work throughout the preparation of this report, and whose energy, creativity and commitment made it possible to overcome any obstacles we encountered.

Finally, our thanks to the team of law school students, recruited and supervised by Mr. Miranda, who did most of the difficult and time consuming task of data collection and research. While we believe it was a useful learning experience for each of them, their contribution to the report was invaluable.

They are:

Claudia Francis (Research Group Liaison) Rutgers Law School

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INTRODUCTION

The Essex County Affirmative Action Policy Council was appointed by Essex County Executive Peter Shapiro for the purpose of examining the status of affirmative action in Essex County government and making recommendations for change where needed.

This report, prepared by the Council includes a description of present policies, practices and procedures with recommendations for the implementation of changes to effect the elimination of discrimination against minorities and women in employment and contractual relations with the County.

The Council established three (3) separate sub-committees, as follows:

Personnel - chaired by Gladys Cancel
Construction - chaired by Frank Askin
Goods & Services - chaired by Steve Edelstein

Recognizing the failure of many laws, regulations and policies which rely primarily on the good will of managers and administrators, it is the hope of this Council that the government of Essex County will adopt and implement these recommendations to establish and enforce a meaningful, result-oriented Affirmative Action Plan.

OVERVIEW

Essex County, composed of twenty-two (22) municipalities with a total population of approximately one million individuals, represents a compact industrial, commercial and residential area which has become the core of one of the most urbanized counties in the country.¹ Although Essex County has the highest concentration of minorities of the twenty-two counties in the state, the ratio is not reflected in the patterns of employment in County government. An examination of the population statistics and comparison of the minority representation in the available labor pool of Essex County reveals a high degree of underutilization of minorities and women throughout County government, with the sharpest discrepancy existing at the management and professional levels.

Although laws against discrimination have long existed in New Jersey and at the federal, state and local levels, the lack of forceful and consistent enforcement of these laws has inhibited meaningful progress by minorities and women. As one commentator has noted,

"For nearly (three) decades, racial discrimination has been proscribed by law in many northern states. Nonetheless, it persists, along with the consequent imbalance in the share of resources and opportunities available to...minority groups (and women). This discrepancy between the promise of our law and the reality of life contributes to the tension of our time."²

While state affirmative action laws appear impressive on paper and would seem to alleviate most effects of discrimination, their practical application has often been a systematic process of avoidance.³

To date, Essex County's employment practices and contracting procedures have evolved with relatively little attention paid to their disparate effects upon minorities and women. An Affirmative Action Program was adopted by the Essex County Board of Freeholders in 1976, however, few of the objectives of that program, which deals only with permanent employees, have been met.

The County's present policy statement regarding affirmative action appears in the Administrative Code, adopted April 2, 1979. Section 9.1.8.g, describing the duties of the Head of the Division of Personnel, states:

"g. Assist the Executive and the Board to insure that the County shall take affirmative action to recruit, appoint, evaluate and promote employees without regard to race, sex, color, marital status, religion, age, physical disability, political affiliation, national origin or liability for service in the armed forces of the United States;

It is the policy of Essex County government to provide equal employment opportunities. This policy shall apply to all phases of employment, including, but not limited to recruitment, hiring, placement, promotion, transfer, lay-off, recall or termination, rates of pay or other forms of compensation and selection for training;

i. All persons including handicapped and minority persons, applying to any department or instrumentality of the County for employment shall be required to file an application and to apply to take any test required for employment, regardless of whether vacancies exist at the time of the application. Such applications shall be reviewed periodically, and whenever a vacancy occurs, and before advertising the same to the public applicants on file shall be contacted to determine if they are still desirous of filling such vacancy;

Affirmative Action shall be a constant and on-going activity; therefore, plans, goals and statistics shall be under constant review;

ii. There is hereby established the full-time position of Affirmative Action Officer, Personnel Division, who shall:

- a) Review affirmative action plans submitted by all County departments and instrumentalities, including their recruitment procedures and records;
- b) Recommend and develop programs to insure upward mobility of all employees and those serving in appointive positions;
- c) Recommend and develop relevant training programs;
- d) Review and update statistics relating to affirmative action goals;
- e) Be responsible for informing all employees of their rights and available remedies for redress of grievances;
- f) Circulate all vacancies and new positions to all County employees prior to public advertising. Such advertising shall be made through minority as well as the regular news media and by notice to the major women's and minority organizations within the County. Such advertising shall be accompanied by the statement: "Essex County is an equal opportunity employer.";
- g) Be responsible for seeing that each department or instrumentality of the County prepares and submits an Affirmative Action Plan, which shall be reviewed at least every nine (9) months. Such plans shall include guidelines for upward mobility and personnel data for identifying areas of under-utilization of women, the handicapped and minorities, with specific goals for remedying such areas. Such updating shall contain a review of department employees, showing progressions in equal opportunity for their advancement in measure commensurate with their abilities. They shall also contain accurate up-to-date job descriptions for each position;

The Affirmative Action Officer shall have available full job descriptions and salary ranges for each position in County government, and shall have input into decisions regarding appointive positions.

iii. The Affirmative Action Officer shall be directly responsible to the County Executive, and through him/her, to the Board, in all matters relating to affirmative action;

iv. Grievances involving equal employment opportunity shall be grieved in the same manner as prescribed for other employee grievances."

In addition to the duties outlined in Section 9.1.8.g, the Affirmative Action Officer is also responsible for the supervision of all County construction contracts entered into by the Purchasing Department where the contract exceeds \$10,000.

The County Affirmative Action office now consists of an Affirmative Action Officer and a typist.

The following three sections of this report treat the separate areas of Personnel, Procurement of Goods and Services, and Construction Contracts. Each section contains a brief description of the present status of that subject area and recommendations for change. Some of the recommendations may overlap. Finally, the report contains the Council's recommendation for staffing and financial support of an Affirmative Action Office designed to carry out the Council's recommendations.

I. PERSONNEL

As of 1979, Essex County employed approximately 7,000 individuals on a permanent basis. Statistically, those employees are divided as follows:

	<u>NUMBER</u>	<u>PERCENTAGE</u>
<u>MALE:</u>	3616	48.8
<u>FEMALE:</u>	3782	51.1
<u>CAUCASIAN:</u>	5180	70.0
<u>BLACK:</u>	1987	26.8
<u>HISPANIC:</u>	126	1.7
<u>OTHER MINORITIES:</u>	24	.2
<u>TOTAL:</u>	7398	8.8

For the purposes of comparison, the minority population of Essex County as a whole is approximately 32 percent (32%).

It should be noted that in analyzing the personnel practices of Essex County, and in this report generally, we have defined a minority group member as an individual who is Black, Spanish speaking, Asian, Indian, Eskimo, or Aleut. Additionally, in furtherance of the charge given to us by the County Executive, we have also considered the impact of present County practices upon women.

Generally, County employees are divided into two (2) groups: Classified and Unclassified. Unclassified employees include elected and appointed officials. Classified employees are divided into three (3) categories--competitive, non-competitive, and labor.

Most positions are competitive, and employees in this category are subject to Civil Service examination. Normally, such an employee must first pass a Civil Service examination and then

successfully complete a ninety (90) day probationary period after hire. Sometimes, however, temporary appointment may be made before the individual has taken a Civil Service exam. Any such employee, though, must pass a Civil Service exam within the time limit imposed by Civil Service regulation -- usually four (4) months.

The non-competitive positions are those which, because of the nature of the work and the salary range, competitive examinations have been considered impractical. Examples of such positions are hospital attendants and custodial workers. The labor category is for those employees working at semi-skilled or unskilled labor.

Article 4, Section 4.4.h of the Administrative Code directs the County Executive to develop, install and maintain centralized personnel procedures, and Section 4.5 authorizes him to remove or suspend any unclassified employee over whose office he has the power of appointment and also, subject to the Code and Civil Service requirements, to delegate to Department heads or retain in his office the appointment and removal of departmental employees.

Section 9.1.8 of the Code establishes a Division of Personnel within the Department of Administration and Finance. The head of the Division of Personnel is the County's personnel director. The responsibility for overseeing and coordinating the County's personnel policy is placed in this office.

The Division of Personnel has devised a standard form application to be completed by applicants for employment. That form requests personal data including address, age, physical condition, criminal record, military service, education, and work experience. No regular reference checks are done by the Personnel Office, although certain Divisions, because of the security nature of their

work, perform their own checks. Those Divisions are the Prosecutor's office, the Probation Department, the County Park Police, the Hospital Center, the Essex County Jail and the Essex County Correction Center.

A substantial percentage of the County's employees belong to a labor union. There are now separate collective bargaining agreements between the County and those unions. Thus, in addition to those personnel policies which are generally applicable, each collective bargaining agreement sets out terms and conditions of employment especially applicable to the bargaining unit covered.

The County's Affirmative Action policy provides generally for equal employment opportunities. The County has a single Affirmative Action Officer, within the Division of Personnel, whose job is described in the Code. The one Affirmative Action Officer is responsible, however, not only for Affirmative Action in the context of employment and job advancement, but also in the context of procurement of goods and services and the administration of construction contracts.

In order to understand Affirmative Action within the context of employment by Essex County, it is necessary first to understand the form of county government as a result of reorganization. Now, County government is divided into eight (8) general departments: Administration & Finance, Citizens Services, Health & Rehabilitation, Law, Parks, Recreation & Cultural Affairs, Planning & Economic Development, Public Safety, and Public Works. In addition to these eight (8) departments, there are 35 additional Divisions. Structurally, the Divisions are organized within the departments. Thus, the Department of Administration and Finance includes the Divisions of Accounts and Control, Budget and Management, Data Processing, Personnel, Public Information, Purchasing, Treasurer, and Employees Retirement. The Department of

Citizens Services includes the Divisions of Aging, Consumer and Consultant Services, Extension Service, Welfare, Youth and Economic Rehabilitation Commission, and Youth Services. The Department of Health and Rehabilitation includes the Divisions of Community Health Services, Geriatric Center, and Hospital Center. The Department of Parks, Recreation and Cultural Affairs includes the Divisions of Arts and Culture and Parks and Recreation. The Department of Planning and Economic Development includes the Division of Community Development, Economic Growth, the Essex County Improvement Authority, Employment Training, and Planning. The Department of Public Safety includes the Divisions of Civil Defense and Disaster Control, Criminal Justice and Planning, Correctional Services, County Police and Medical Examiner. The Department of Public Works includes the Divisions of Buildings and Grounds, Engineering, Environmental Service, Fleet Management, Roads and Bridges, and Security. Article 14 of the Code includes a conversion chart indicating the transfer of functions from prior agencies to the new structure.

Although about 28 percent of the County's employees are minority group members, that percentage is deceiving in a meaningful assessment of the County's success in Affirmative Action. In fact, analysis reveals that minority employees are concentrated heavily in lower level positions. For example, approximately 17 percent of all Black employees are in CETA positions, approximately 37 percent of all Black employees work for Essex County College, and approximately 14 percent of all Black employees work for the Correction Center. Approximately 56 percent of all Hispanic employees work for Essex County College.

What is clear from analysis is that there is a significant underutilization of minority group members and women in middle management positions and upper management positions.

We believe that an effective Affirmative Action program in the context of personnel practices must include specific goals and the commitment to attain them. Therefore, we make the following recommendations for change in this area.

GOALS AND COMMITMENTS

1. The County should immediately establish a goal for the employment of minorities of not less than 32 percent. Note that this is the goal established by the state for Essex County. This goal should apply not only to the total work profile, but to each level of the personnel structure. Thus, the goal should apply equally to middle management and upper management positions. Criteria should be developed for measuring compliance with the goal which adequately identifies those positions which are middle and upper management for the purpose of such analysis. Although the County's Affirmative Action policy will be administered through the Affirmative Action Office, the commitment to Affirmative Action must be made at the highest level of County government. Therefore, the County Executive should advise all division heads and department heads of the goal, and should direct them to comply with all programs designed to achieve that goal. We specifically recommend that the success of each department head and division head in complying with Affirmative Action policies should constitute a significant part of that individual's job evaluation.

NEW HIRING, RECRUITMENT, AND UNIFORMITY OF PRACTICE

2. We recognize that in the context of personnel practices, Affirmative Action programs are limited by the multiplicity of governmental and collective bargaining agreement restrictions. However, even within those restrictions the County can take certain steps to promote its Affirmative Action policies. At present, those jobs which are Civil Service related are to be filled from

a list provided by Civil Service in the ranking order of finish on the appropriate examination. Such positions are advertised by Civil Service through Job Opportunities, State, County and Local Government Bulletin, a Civil Service Publication. This bulletin is available only upon request. Although seasonal positions are generally advertised outside of the bulletin and some positions are circulated internally, the underlying policies of Affirmative Action would better be served by a uniform procedure to insure that employment opportunity information is widely disseminated in minority communities. To that end, we recommend that the County take advantage of public announcements both in conventional and unconventional forum. The County should make available employment information through community or church groups with special access to minority applicants.

In addition to the wide publication of available job positions, the County should engage in the active recruitment of minority and women employees. This is essential if Affirmative Action goals are to be achieved in the middle and upper management positions. Recruitment should include but not necessarily be limited to visits to colleges and other educational institutions and contacts with personnel agencies.

Uniform procedures should be instituted to insure that the hiring qualifications and standards imposed upon every job are actually related to job performance requirements. Interviewing techniques should be standardized to a point where fair comparisons may be made among applicants, and all applicants should be extended a friendly and courteous reception.

At present, personnel practices vary widely among the County's many divisions and departments. Such variations tend to limit Affirmative Action Policy to the extent of the commitment of each individual division or department head. It is essential that uniform policies should be developed so that Affirmative

Action goals are institutionalized.

The Affirmative Action Office should monitor all terminations and attrition of County employees to be certain that no one minority group is at anytime suffering a disparate effect.

ADVANCEMENT

3. All promotional vacancies within a particular department or agency should be openly posted so as to be prominently visible to existing employees. Again, uniform standards should be developed. If analysis reveals that one or more minority groups are underrepresented in any position, in service training should be developed so as to qualify more minority employees for higher rated positions. With particular reference to middle and upper management positions, programs should be developed to provide educational training in specific areas of expertise as well as the theories of management for present employees. Such programs should include but not necessarily be limited to the payment of tuition at local colleges and universities on behalf of present employees.

Section 13.11 of the Code specifically permits the implementation of a merit system for employees, and recently negotiated labor contracts between the County and some of its municipal unions have provided for merit evaluations of employees. Every effort must be made to insure that all evaluation procedures are as objective and uniform as possible and that appeal procedures are available for those employees receiving unfavorable evaluations.

GRIEVANCES

4. A swift and workable system must be developed so that any employee or applicant who has reason to believe that he or she

has been discriminated against for any impermissible reason may promptly have a determination of such grievance.

CIVIL SERVICE

5. At present, Civil Service regulations hamper Affirmative Action goals in at least two respects. First, an analysis of Civil Service testing procedures reveals that artificial barriers are sometimes created concerning the hiring or promotion of minority applicants and employees. Second, existing Civil Service regulations provide for preferences on eligibility lists which often are in conflict with Affirmative Action policy. For example, section 4:1-11.2 of the Civil Service Rules provides significant advantages for veterans in establishing eligibility lists.

To the extent that Civil Service Rules do conflict with the goals of Affirmative Action, the County should exert such influence as is possible to bring about the reform of such rules or to seek exception from them.

The specific details and procedures for implementing these recommendations must be developed by a full-time staff person, whose hiring is recommended later in this report.

II. THE PROCUREMENT OF GOODS AND SERVICES

The Division of Purchasing of Essex County acts as the centralized purchasing system for the procurement of goods and services for the County. Under the Administrative Code, the Division of Purchasing is located within the Department of Administration and Finance. The division chief of the Division of Purchasing serves as the County's purchasing agent.

Generally, requisitions for goods and services, once signed and approved by the designated individual in each Division of the County, are forwarded to the Division of Purchasing and are ordered pursuant to instructions of the purchasing agent. All goods and services that are purchased by the County are purchased under contract. The County purchases virtually every kind of product. Annually, the County writes approximately twenty-five million dollars (\$25,000,000.) in contracts for goods and services.

County contracts may be divided into three (3) categories: formal bids, informal bids, and miscellaneous requisitions. Formal bids are required on contracts for services or commodities which total more than \$4,500. in the fiscal year. Contracts which require informal bids may total more than \$4,500. but cover items of a perishable nature, such as foodstuffs, or other specific exceptions (including certain professional services) set forth in the Local Public Contracts Law, NJSA 40A:11-1 et seq. Miscellaneous requisitions are those items or services which do not exceed \$2,500. in one year.

On contracts requiring formal bids, notice of opportunity to compete for award of those contracts must be made public. In Essex County, such notice is given exclusively by publication of the general contract specifications once in the Newark Star

Ledger. The notice indicates when and where contract specifications may be obtained. Sealed bids are then accepted at the Hall of Records until a predesignated, specified time. Affidavits which state that the vendor is aware of and in compliance with Public Law 1975, c.127 are required to be filed with the bids when they are submitted. At the time stated in the public notice, the bids are opened and read publicly. The contract is then awarded to the lowest responsible bidder - - that vendor of goods and services which are of adequate quality, able to meet the required specifications.

With respect to informal bids and miscellaneous requisitions, publication is not required. Bids are instead solicited from those vendors whose names are chosen by the buyers for the County from the County's vendor list, a list which now contains approximately 3,000 names. Usually, the buyers in the Division of Purchasing notify by mail those vendors with whom they are familiar or with whom the County has dealt in the past. When the item in question is in excess of \$500., at least three (3) price quotes are required. The contract is then awarded to the lowest responsible bidder. Nearly fifty percent (50%) of the total amount of money spent by the County on goods and services is represented by items under \$2,500.

Article Six, Section 6.2 of the Administrative Code provides that: " all purchases which require competitive bidding as defined in the New Jersey Local Public Contracts Law shall conform to N.J.S.A. 40A:11-20 et seq. and the local Public Contract Guidelines and Local Public Contract Regulations as amended and promulgated by the New Jersey Division of Local Government Services." The Local Public Contract Regulations are contained in the New Jersey Administrative Code, 5:30-14.1 et seq. The Local Public Contract Guidelines are not contained in the Code but are available from the Bureau of Local Management Services, Division of Local Government Services. The Guidelines are advisory in nature.

On formal bids for contracts, it is now required by the County that the bidder have on file with the County a Permanent Bid and Contract Bond for Supplies, or bid bond, or a certified check or cashiers check made payable to Essex County for an amount equal to ten percent (10%) of the bid but not to exceed \$20,000. These monies are guarantees that the contractor will enter into and accept the contract if it is awarded to him.

The successful bidder on a contract for goods is required to have on file with the County a Permanent Bid and Contract Bond or, in the alternative, a surety company bond for the full amount of the award. The successful bidder on a contract for services is required to furnish a satisfactory performance bond for the full amount of the contract and a surety co. bond. These are to insure the faithful performance of the contract.

The Division of Purchasing, in addition to the requirements of the Administrative Code, is bound by the affirmative action guidelines of the State of New Jersey, the County of Essex and the Local Public Contracts Law.

There is no ready way to identify minority vendors who have dealt with the County, but a list of minority suppliers was compiled by the New York-New Jersey Regional Minority Council for the Conference of Purchasing Management Associates of New York and New Jersey in February of 1979. While not claiming to list every minority vendor in the metropolitan area, it is the most authoritative work available to the subcommittee. When that list is compared to the County Vendor Activity Report for the period ending May 1, 1979, the comparison reveals that, on a pro-rated basis, the dollar amount of contracts awarded to minority vendors totals less than one percent of the total contracts awarded.

Based on the practices now existing in Essex County, the following recommendations are designed to increase the involvement of minorities and women in the area of goods and services.

ESTABLISHMENT OF MINORITY VENDORS LIST

1. The County Division of Purchasing has not established and does not maintain a list of minority vendors. Such a list should be established. For the purposes of such a list, a minority vendor should be defined as an enterprise at least fifty percent of which is owned by minority group members or, in the case of a publicly held business, one in which at least fifty one percent of the stock is owned by minority group members. This list may be compiled from all reliable sources, including existing lists which have been compiled by other organizations and agencies. In establishing its list, however, the County should not rely exclusively on any one or more of such existing lists but should solicit names of minority vendors directly from the minority community. Special attention should be paid to reaching minority vendors based in Essex County. Such solicitation should, at a minimum, take the form of communication with leaders in the minority community and the placing of advertising in publications or other media sources especially selected to reach the minority community. Advertising should also be placed in those outlets which are now used to advertise County contracts.

In establishing a list of minority vendors, the County should require each vendor to be included to provide proof, in a form acceptable to the County but consisting of at least a sworn statement that it meets the definitional requirement. Where appropriate, the County should explore similar forms used by other governmental agencies and consider harmonizing the County's forms to them so as to avoid duplication and excessive paperwork.

Under any circumstances, penalties should be imposed for falsification of ownership information including but not limited to the imposition of fines and the banning of offenders, their businesses, and their successor enterprises from contracting with the County.

Generally, but especially with those businesses which purport to be owned by women, we are sensitive to the possibility of fraud and the concealment of true ownership. Thus, the underlying policies of affirmative action would be frustrated by giving any preference to a business in which the beneficial or true owner placed nominal ownership in the name of minority group member or a woman. Having recognized this possibility, we urge the County to develop standards and methods to determine any such fraud or concealment.

USE OF THE LIST

2. Now, contracts of under \$2,500. are awarded after three vendors have been directly contacted through the Division of Purchasing. After the Minority Vendors List has been established, and in order to insure that minority vendors actually have an opportunity to compete for a substantial portion of County contracts, at least one of the three vendors contacted should be taken from the Minority Vendors list. Practical considerations may make it difficult to apply this rule in every case. There may, for example, be a particular commodity or service for which no minority vendor exists on the list, but the rule should be applied absent a compelling reason to the contrary.

Nothing in this recommendation should be construed as relaxing the requirement that the contract be awarded to the lowest responsible bidder, and the integrity of the goods and services procured by the County will not be in any way impaired. The term "responsible", however, should be defined in such a way as to limit the possibility of abuse in its application.

Therefore, factors which especially affect minority vendors, such as the length of time in business or the extent of initial capitalization, should not in and of themselves be determinative in evaluating whether a bidder is a "responsible" vendor.

In order to assure that the minority vendors list will be most effective, it should be updated periodically.

ADVERTISING

3. Now, the County advertises only in the Newark Star Ledger. While the County should continue to advertise in that outlet, since it is the largest general circulation newspaper in the area, other outlets should also be used. On a rotating basis, the County should advertise in municipal newspapers, special interest papers, and other newspapers and periodicals particularly selected to reach the minority community. The purpose of that such additional advertising should include advising the minority community that an affirmative action program exists at the County level with respect to the purchase of goods and services. In addition to being urged to submit their names to the County for placement on the Minority Vendors List, the attention of minority vendors should also be directed, through those advertisements, to the Star Ledger for more detailed information on particular items to be bid.

BONDING REQUIREMENTS

4. It appears that the bonding requirements now in effect in in Essex County serve to limit the participation of minority vendors in the bidding process. Such is probably the case not only in this County but also nationwide. The business experience, proved managerial history, and substantial assets required by many bonding companies present almost insurmountable obstacles for many minority firms, particularly those which are newly established. Likewise, the ten percent alternative is very

probably a practical impossibility for many minority firms.

The bonding requirements imposed by Essex County are stringent and exceed those of many other governmental units. We believe the requirements of NJSA 40A:11-20 et seq. to be permissive and not mandatory. Therefore, we recommend that the bonding requirements, as now enforced, should be altered in cases where they appear to restrict unfairly or pose an obstacle to an otherwise eligible vendor. Any such action, however, should be preceded by a written opinion by the Essex County Counsel that such a change would not violate State law.

We believe that the Division of Purchasing can and should be flexible and creative in its approach to the bonding requirements to be imposed upon minority vendors, and the Affirmative Action Office should develop appropriate guidelines to determine the circumstances under which reductions or alterations in the bonding requirements will be permitted. Those guidelines should consider, by way of example and not limitation, the capitalization of the vendor, the total assets of the vendor, the length of time during which the vendor has been in business, the number of other contracts which the vendor has, the vendor's history of reliability, if any, and the vendor's ability to post bond or submit deposits on other bids.

Alterations in the bonding requirements should probably be made on a case by case basis, but we recommend that modifications may be made both in the bid bonding requirements and the performance bonding requirements. By way of example only, bonding requirements could be altered by reducing from ten percent to a lesser percentage the amount of deposit required, accepting secured or unsecured executory bonds in lieu of standard bid or performance bonds, or eliminating all bonding requirements on jobs under a certain dollar amount.

VENDOR COMPLIANCE

5. It is essential that the commitment to affirmative action expressed by the County extend to all vendors with which the County does business, and, therefore, those programs which assure that vendors who do deal with the County adhere to the principles of affirmative action should be continued and strengthened. Now, vendors who deal with the County are required to submit sworn statements indicating that they comply with the requirements of Public Law 1975. c.127.

One way in which such random examinations may be conducted would be to require a vendor to produce for County inspection its affirmative action plan together with evidence of its implementation. If plans are deficient, the Affirmative Action Office should assist the vendor in improving and implementing such plans at once. A second examination should then be made a brief time later. Vendors which refuse to produce the requested documentation or which have no affirmative action plan at all, or which are uncooperative in improving or implementing their plan should be subject to penalties, including their County contract and their eligibility for future County contracts. As with the information submitted for the Minority Vendors List, penalties for falsification should also be imposed.

Such other reasonable methods of monitoring compliance on the part of vendors as may be devised by the Affirmative Action Office should also be utilized.

Essex County should join the Minority Purchasing Council, and should work closely with the State's Affirmative Action Offices to avoid duplication. Also, the Affirmative Action Office should be able to direct those with questions to the appropriate locations to obtain information concerning regulations

and methods of processing applications for aid for the development of minority businesses, licensing information, permit and land use approval information, and similar business or governmental information.

GOALS

7. The Affirmative Action Office, in conjunction with the County Executive should set specific goals to measure the success of these programs. The goals should be expressed both in terms of the total dollar amount of contracts to be awarded to minority vendors and in terms of the total number of minority vendors to be contracted with. Such goals must necessarily reflect the practical problems involved in the implementation of any new program, but we consider it vital that the goals not be set at so low a level as to represent a mere gesture.

III. CONSTRUCTION CONTRACTS

It is impossible to determine how well the County is complying with its legal obligations to guarantee adequate minority participation in construction projects funded by it. While the legal requirements concerning non-discrimination and affirmative action on such contracts are reasonably clear, there is not now sufficient verifiable data to state whether these requirements are being fulfilled.

This data gap appears to be the result of several causes. Prior to 1978, Essex County had no mechanism for monitoring its affirmative action plan to assure minority participation in construction projects. County construction projects did not come within the state affirmative action statute until July 10, 1978, and some of the County contracts still in progress were awarded prior to that date. Even for those contracts which are now being monitored on a regular basis by the County Affirmative Action Officer, the manpower utilization reports which are on file are of limited value since they do not include racial breakdown by hours worked, and contractors have not been required to submit certified payrolls. Thus, even where contractors claim to have met their affirmative action goals, such claims cannot be verified in this report.

It should be noted that this report does not deal at all with the problem of sexual discrimination in construction jobs. At present, women are grouped with minorities and there is no provision for monitoring or enforcing sex goals apart from general minority goals. This issue should be taken up separately as soon as the immediate problems discussed herein are resolved. In the meantime, contractors should be required to report women workers as a separate category.

The County Affirmative Action Officer has apparently handled problems of underutilization of minority workers in an ad hoc manner, attempting as best he could to find minority craftspersons for specific jobs as areas of underutilization were disclosed without creating a record of his successes and failures in those efforts, and thus creating no history of availability or underavailability of minority workers in specific crafts. The result is that the Affirmative Action Officer believes he has been able to guarantee good faith efforts to meet minority goals, but there is no historical record to support this subjective belief. Nor is there any record of the availability of minority workers in Essex County for specific crafts.

Many of these deficiencies apparently result from the fact that Essex County has only a single Affirmative Action Officer who has many other responsibilities and has no clerical or logistical support. Under the circumstances, he could not be expected to have created the kind of recorded history which is ultimately necessary if there is to be a consistent affirmative action program in the County.

Bearing in mind these deficiencies in our available data, we believe we can nonetheless point to certain weaknesses in the present efforts to enforce affirmative action in construction projects in addition to the general need for an improved system of monitoring affirmative action programs and minority workforce participation.

A major problem in enforcement of non-discrimination on construction projects is that the State affirmative action obligations apply only to those contractors and subcontractors with more than four employees. Construction work tends to be divided among a number of subcontractors, few of whom have more than four employees on a specific job. Even if the law refers to

the total number of employees of the subcontractor and not just those working on the job, many small subcontractors hire for each job and have no permanent workforce, and even if they do there is no mechanism for determining the contractor's total workforce to establish whether they are exempt.

As best we can determine, there have been no County contracts awarded to minority contractors outside of contracts subject to the "set-aside" requirement of Round II of the local Public Works Act. A special effort should be made to guarantee participation of minority contractors on County projects since this would make it more likely that minority workers would be employed on small jobs where the subcontractor may not fall under the affirmative action obligation.

While the scope of the problem is unclear because of the lack of verifiable data, it is clear from the figures that are available that in at least certain of the construction trades, minority participation on County jobs has been quite low, a situation which the County's Affirmative Action Officer attributes in large measure to the unavailability of minority workers in certain trades. In the following trades, for example, the minority percentage of craftspersons who worked on County jobs during the year 1978 was well below twenty percent: ironworkers, lathers, sheet metal workers, steamfitters. It would seem that the only way that sufficient minority craftspersons are going to become available in these trades is if public agencies guarantee the existence of programs which can train minority workers in these occupations. Now, however, there is no public agency in Essex County training minority construction workers.

A successful affirmative action program in the construction industry requires these essential ingredients: clear-cut obligations on the part of the contractors (and indirectly the trade unions); and effective system of monitoring and enforcing those

obligations, including effective economic sanctions in the event of non-compliance; and an available supply of workers through which contractors can meet their obligations if the unions are unable to supply them. Specific recommendations will be made in each of these three areas.

a) The contractors' obligations - At present there are two sources of legal requirements designed to guarantee minority participation in County-funded projects. Any projects which receive federal assistance under Round II of the Local Public Works Act through the Economic Development Adm. (EDA) must comply with a set-aside provision that ten (10) percent of the amount of each grant be expended to Minority Business Enterprise (MBE). Secondly, all County-funded construction is subject to the affirmative action requirements of Public Law 1975, c.127, and the implementing regulations of the State Treasurer. Those regulations authorize the County to further extend contractors' affirmative action requirements by a County Affirmative Action Plan subject to the approval of the Treasurer. The Manual for Affirmative Action Regulations states that a public agency must "establish goals which are not lower than construction goals established by the Regulations issued by the Treasurer...." To date, Essex County has not adopted its own plan.

Under the State Affirmative Action law, and its implementing regulations, Essex County contractors must make a good faith effort to see that at least 32 percent of man hours worked on County-funded construction sites is minority. That is a reasonable and realistic goal, and if fully implemented would guarantee substantial minority participation at those work sites. The major weakness in the State law is that it exempts from its obligations contractors (and subcontractors) with fewer than four employees. Since construction work tends to be divided among several subcontractors, it is quite possible to have a work site

with several dozen workers side by side but divided among so many employers that no employer has more than four employees on the site. Under the present affirmative action enforcement system, none would have any obligation to undertake affirmative action. Furthermore, even where a contractor has a total workforce of more than four employees, if there are only two employees needed on a particular job it is unclear whether he can be compelled to allocate the work on a daily basis so that over the course of the total job minority workers are employed for at least 32 percent of the total hours worked. This is something that the County Affirmative Action Officer should explore in developing a comprehensive plan for Essex County.

The most effective way of dealing with the problem of the small contractors would be for the County as a part of a new Affirmative Action Plan to adopt its own set-aside requirement for Minority Business Enterprises. According to figures supplied by the County's Department of Public Works, the County has been able to comply with or exceed the ten percent set-aside on the four contracts let by the County subject to EDA provisions. However, the Public Works compliance officer candidly reports that he cannot personally verify eligibility of alleged MBEs, and must often accept the unverified claims of contractors that they fulfill the MBE requirements. Where such claims have been found to be false, it has often been after completion of a job when it was too late to take corrective action.

On the other hand, the County Affirmative Action Officer reports that no Minority Business Enterprises have participated in County construction projects not subject to EDA requirement. These facts taken together indicate that (1) there are ample minority construction firms in Essex County to meet a percentage goal; (2) there are minority construction firms in Essex County capable of successfully completing relatively large construction

projects; and (3) the setting of a goal for minority business enterprise participation spawns increased minority business activity in the County construction process.

The EDA's set-aside figure of ten percent for contractors represents an effort to make minority contractor participation roughly equivalent to minority population percentages, although it may be a faulty assumption that increasing the number of minority contractors actually increases the minority workforce. The minority population in the Essex County area is, of course, substantially above the national average, and we believe Essex County should set a higher goal of minority participation than EDA has set. We would suggest that the Essex goal be set at twenty percent. It should be noted that this provision would supplement and not replace the affirmative action obligations of other contractors on the job who are subject to the provisions of Public Law 1975, c.127. Thus, we recommend the following:

COUNTY PLAN

1. Because of the inherent weakness of Public Law 1975, c.127, the County should adopt its own Affirmative Action Plan for County financed construction. The plan should be prepared by the Affirmative Action Office.

SET-ASIDE PROVISIONS

2. The County plan should include a set-aside provision whereby twenty percent of each County construction contract be awarded to Minority Business Enterprises in the absence of waiver based upon a good faith inability to comply. In implementing this provision, it is essential that the County Affirmative Action Officer develop and maintain a list of approved Minority Business Enterprises eligible to receive contracts under the set-aside provision.

BONDING

3. It is the belief of the Affirmative Action Officer that

present bonding requirements inhibit the participation of Minority Business Enterprises in the competitive bidding process. Therefore, we recommend that the Affirmative Action Officer consult with the County Counsel to determine if the bidding requirements of the state law might be relaxed in regard to contracts in an amount less than \$25,000.

b) Monitoring and Enforcement - Enforcement of affirmative action obligations requires an effective system of monitoring construction sites, which in turn requires staff adequate to the task. It also requires that the Affirmative Action Officer have ready access to an available minority labor pool when the contractor is unable to meet affirmative action obligations. At present, contractors are required to submit regular manpower utilization reports, but those reports contain only raw numbers of white and non-white workers employed without listing names or an hourly breakdown. Thus, the only verification of those numbers are the visual inspections of the workforce by the Affirmative Action Officer at the time of site visits; and unless the investigator stays at the site continuously there is no way to determine how many hours are being worked by various workers. We recommend that contractors be required to submit their manpower utilization reports with a racial breakdown by hours worked and that they be required to submit a certified payroll so that those reports can be verified.

Because of time restraints, the Affirmative Action Officer now appears to handle violations of affirmative action goals in an ad hoc manner, attempting to correct them on the spot, and if unable to do so, assuming the employer is acting in good faith and ignoring the failure to comply. That system must change. A formal Alert Notice should be served on the contractor and placed in the Affirmative Action records every time a contractor falls short of the affirmative action goal.

The appropriate notices should be sent to sources of minority labor supply and the records should reflect the results of that process, whether or not minority craftsmen were supplied for the job, and, if not, why. Only in this way will shortfalls of minority labor supply become known. We make the following recommendations:

MONITORING-CONTRACTORS' OBLIGATION

1. The County's Affirmative Action Plan should require that construction contractors report the racial composition of their workforces by hours worked and provide the Affirmative Action Officer with certified payrolls for the purpose of verification.

MONITORING-AFFIRMATIVE ACTION OFFICE OBLIGATION

2. The Affirmative Action Officer should keep detailed records of all failures of contractors to meet their affirmative action goals and the ability of the Affirmative Action Office to refer minority workers to fulfill such goals.

ECONOMIC SANCTIONS

3. The Affirmative Action Office should develop and enforce effective economic sanctions in the event of non-compliance.

c) Availability of minority labor supply - Accepting the unverified Manpower Utilization Reports on file at face value, it is apparent that there are a number of construction trades in which minority participation has been quite low in County construction projects. It would appear that in these trades even with the intervention of the Affirmative Action Officer, skilled minority workers were not available to fill these jobs. The most significant underutilization appeared among ironworkers, lathers, sheet metal workers, and steamfitters. In order to carry out fully its obligations, we recommend that the County undertake an affirmative duty to help assure the training of minority craftspersons in these areas.

The County's involvement in training programs for minority construction workers could take on any one of several forms including, but not limited to the establishment of a County sponsored training programs or the institutionalization of on the job training in the letting of County contracts.

In order to make this training most effective, the Affirmative Action Office should maintain a regular census of skilled minority craftspersons in Essex County both for purposes of referring workers to job sites where affirmative action goals are not being met and to guide the choice and nature of training to be offered at various times. Thus, we recommend:

TRAINING

1. The Affirmative Action Officer should prepare a proposal for the County to help establish training programs for minority craftspersons.

CENSUS OF SKILLED WORKERS

2. The Affirmative Action Office should maintain a census of skilled minority craftspersons in Essex County.

CONCLUSION

It is the conclusion of the Affirmative Action Advisory Council that Essex County should immediately develop a goal-oriented affirmative action plan which encompasses the many recommendations of this report. To accomplish that end, we believe it is essential to strengthen significantly the County's commitment to affirmative action in terms of structure and resources.

We recommend that the Affirmative Action Office, now located in the Department of Administration and Finance, be restructured as an independent office with the Affirmative Action Officer reporting directly to the County Executive. This recommendation is made with full recognition that it will require an amendment to the County Charter. The Council urges that this proposal be made to the Board of Chosen Freeholders as soon as possible.

In every area of affirmative action, it is plain that the resources of the present Affirmative Action Office are insufficient to deal with a problem of such magnitude. Therefore, we recommend that the Affirmative Action Office be expanded to include the following personnel structure:

AFFIRMATIVE ACTION OFFICER

Coordinator of Personnel

Coordinator of Goods & Services
and Construction contracts

S u p p o r t S t a f f

We should emphasize, however, that this is the minimum, immediate level of staffing needed and that it may, in the future, need to be increased.

We recommend that the Affirmative Action Officer be paid at an annual rate approximately the same as Department Heads and that the Coordinator for Personnel and the Coordinator for Goods and Services and Construction Contracts be paid at appropriately lower rates.

We believe that a minimum of \$100,000. will be needed on an annual basis to fund the newly structured Affirmative Action Office, and we urge the County Executive to present such a budget request to the Board of Chosen Freeholders. It is our belief that there are federal funds which might assist in underwriting the costs of this office. However, the County must appropriate sufficient funds to operate the office, since such federal funds are not guaranteed. Parenthetically, seeking such funds should be one of the primary functions of the County Affirmative Action Officer.

The Affirmative Action Policy Council does not view itself as a permanent body. However, in light of the amount of research done by the Council and the understanding it has gained of the problems of affirmative action in the context of County government, we are willing to reconvene at such time as the County Executive may wish for the purpose of meeting with the Affirmative Action Officer and reviewing those programs which have been developed to carry out the recommendations of this report.

FOOTNOTES

1. 1978 Official Directory, Essex County
2. Blumrosen, "Antidiscrimination Laws in Action in New Jersey: A Law-Sociology Study," 19 Rutgers L.Rev. 189 (1965)
3. Depalma, "Affirmative Inaction," New Jersey Magazine July, 1979, pp. 8-16

